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In The

Supreme Court of the United States

October Term, 1988

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO,

Petitioner,

vs.

BLOUNT INTERNATIONAL, LTD.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL SECOND DISTRICT STATE OF FLORIDA

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Did the Florida courts properly apply established Florida law in finding that an agency relationship existed between the International Association of Bridge, Structural and Ornamental Ironworkers and its subordinate Local sufficient to impose liability on the International for the intentional tortious conduct of the Local where the state courts below concluded that the International controlled and dominated the affairs of the Local and ratified or acquiesced in the admitted tortious conduct of the Local?

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BACKGROUND

On the afternoon of October 26, 1979, over four hundred (400) persons, including members of the International Association of Bridge, Structural and Ornamental Ironworkers ("Petitioner" or "International") engaged in a violent mass demonstration at Blount International, Ltd.'s ("Respondent" or "Blount") McIntosh Unit No. 3 power plant construction site on Lake Parker Drive in Lakeland, Florida (App. to Petition at p. 6a).[1] Because of the demonstrators' numbers and threatening actions, Blount employees were unable to enter or leave through the gates of the power plant site at their normal shut-down time of 3:30 p.m. By order of the Lakeland police, Blount employees were required to remain within the fenced site until approximately 6:15 p.m. (App. to Petition at p. 6a).

The demonstration was marked by numerous acts of trespass and violence against Blount employees and their property. The demonstrators also directed their violence toward approximately seventy-five (75) sworn peace officers of the Lakeland Police Department and the Polk County Sheriff's Department (App. to Petition at p. 6a). Blount employees were able to leave the site on the evening of October 26 only by being transported in covered panel trucks under police escort to a nearby employee

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[1] Charles M. "Tony" Pinion, President of the International's Local 397, who was at the mass demonstration, estimated that six hundred (600) to seven hundred (700) persons were present at the mass demonstration, including four hundred (400) to five hundred (500) Ironworkers within Local 397's jurisdiction (App. to Petition at p. 6a).

parking lot. As the Blount employees jumped from the covered vans and ran to their automobiles, dozens of demonstrators attacked and injured both Blount employees and police. Only the presence of a human line of police in the parking lot prevented additional serious injuries (App. to Petition at pp. 6a-7a). During the afternoon of October 26, Lakeland police arrested at least four (4) demonstrators for offenses as varied as rioting, aggravated battery, resisting arrest and violence and trespass. All four (4) of these individuals pled guilty and were fined or imprisoned, or both (App. to Petition at p. 7a).

Blount instituted this action on October 27, 1979 seeking relief for tortious and wrongful acts by numerous defendants, including the International, arising out of the mass demonstration at the power plant site on October 26 (App. to Petition at p. 8a). In its Complaint, Blount stated that the International's actions constituted tortious and wrongful interference with the business relationship that Blount enjoyed with the City of Lakeland, Florida and certain of Blount's subcontractors (App. to Petition at pp. 2a-3a).

Prior to trial, Blount settled its dispute, by Consent Judgment, with all defendants except the International. In the Consent Judgment, Local 397 and the various individual Defendants admitted:

> . . . the conduct of the Individual Defendants and of the agents, representatives and members of Local 397 on October 26, 1979, was threatening, intimidating, coercing and harassing of Plaintiff, its employees, agents and their families, and that said conduct violated the laws and dignity of the State of Florida. Furthermore, the Defendants party to this Consent

> Judgment *admit that they interfered with the business relationship which Plaintiff had established with the City of Lakeland, Florida, and certain of Plaintiff's subcontractors, and that they engaged in the violent, threatening, and intimidating conduct* which occurred during the latter part of October, 1979, at Plaintiff's power plant construction site on Lake Parker Drive in Lakeland, Florida.

(App. at p. 3-4) (emphasis added)

Throughout this litigation, Blount has sought to hold the International liable for the admitted tortious conduct of Local 397 on the basis of an agency relationship between the International and Local 397, *i.e. respondeat superior*. Prior to trial, the parties agreed to submit the agency issue to the trial court for a ruling. The parties agreed to the evidence which the court could consider:

> Specifically, the parties stipulated, for the purpose of the Court's consideration of the agency issue, to the admissibility of the affidavit of Juel Drake, the depositions of Chester Dennison, Billy Ray Connor and John Walsh, the constitution of the international, the By-Laws of Local 397, certain minutes of meetings of Local 397, and any other evidence which has been submitted by the parties on the International's Motion For Summary Judgment, provided, however, that the parties reserve their right to challenge the relevancy or materiality of such evidence or the weight it should be given by the Court.

(App. at p. 14).

After reviewing the evidence, the Florida trial court held on January 12, 1987 that the International was vicariously liable for Local 397's tortious conduct (App. to Petition at p. 23a). In reaching its decision, the trial court re-

lied upon the plain language of the International constitution and, separate and apart from the constitution, the following *eight* (8) additional factual findings:

1. The International's Southeastern Vice President, John Walsh, failed to make any effort to insure that Local 397 did not violate the Preliminary Injunction issued by the trial court (App. to Petition at p. 8a);

2. The International failed to bring charges against the individuals responsible for the tortious activities and mass demonstrations, such actions being in violation of the International constitution (App. to Petition at p. 8a);

3. The International failed to punish Local 397 for its actions, for example, by suspending or revoking Local 397's charter (App. to Petition at p. 8a);

4. The International failed, in any way, to communicate to its members or to the public that it disapproved of or objected to the unlawful activities (App. to Petition at p. 9a);

5. The deposition testimony of Billy Ray Connor, the general organizer for Defendant International, as well as Local 397's former business manager, which illustrated and acknowledged the subservient relationship of Local 397 to the International (App. to Petition at p. 12a);

6. The minutes of Local 397's business meetings which reflected constant discussions concerning the business, betterment and support of the International (App. to Petition at p. 13a);

7. Evidence that Local 397's members and officers participated in many diverse activities sponsored or participated in by the International, such as AFL-CIO, COPE

(Committee On Political Education), and District Council meetings (App. to Petition at p. 14a); and

8. Evidence that the By-Laws of Local 397 reflected the dominance and control of the International over its Local's affairs (App. to Petition at p. 14a).

The trial court found, based upon all the evidence presented, that the International dominated and controlled Local 397, and that such control was *actual* and not simply theoretical (App. to Petition at pp. 4a-5a). The trial court further found that the International and Local 397 *participated* in the unlawful mass demonstration (App. to Petition at p. 14a), and that although the International did not, by the evidence before the court, direct or in a formal way authorize the activities of the Local, the International *ratified or acquiesced* in the activity (App. to Petition at pp. 5a, 8a-9a). Therefore, the trial court found that Local 397 acted as agent of the International under Florida law (App. to Petition at pp. 15a, 18a).

On appeal to the Florida Second District Court of Appeals, the trial court's decision was affirmed (App. to Petition at p. 33a). The court of appeals found that the trial court's agency finding was based upon extensive findings of fact and conclusions of law supported by the evidence (App. to Petition at p. 25a). Subsequently, the court of appeals denied Petitioner's motion for rehearing and motion for rehearing *en banc* (App. to Petition at p. 34a).

The Florida Supreme Court then denied the International's Petition for Review (App. to Petition at p. 35a).

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ARGUMENT

I. The International Simply Disagrees With The Factual Findings Of The Florida Courts

The International maintains, quite remarkably, that the Florida courts relied "solely" and "exclusively" upon the provisions of the International constitution in finding an agency relationship between the International and Local 397 (Petition at pp. 4-5). The International fails to note, however, the eight (8) other distinct factual bases upon which the trial court reached its decision (*see* discussion pp. 4-5, *supra*). Nor did the court of appeals rely "solely" and "exclusively" upon the International constitution in affirming the trial court. The court of appeals affirmed all aspects of the trial court's decision, thereby recognizing all factual bases from which the trial court held the International liable (App. to Petition at p. 25a).

The International's dispute, quite simply, is with the factual findings of the lower courts. Review of a lower court decision which turns solely upon an analysis of the particular facts involved is generally insufficient grounds for granting Certiorari. *Southern Power Co. v. North Carolina Pub. Service Co.*, 263 U.S. 508 (1924); *Houston Oil Co. of Texas v. Goodrich*, 245 U.S. 440 (1918). A court of law, such as this Court, is not a court for correction of errors in fact-finding and it should not undertake to review findings of fact by courts below in the absence of a very obvious and exceptional showing of error. *Goodman*

v. Lukens Steel Co., 107 S. Ct. 2617 (1987); *Graver Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271 (1949), *aff'd* 339 U.S. 605. No such error is present here. On that basis alone, the instant Petition should be denied. *Southern Power Co., supra; Houston Oil Co. of Texas, supra.*

II. The International Has Failed To Establish Any Legitimate Basis For Federal Preemption Of State Law Agency Principles

A. Preemption Is Not Warranted Because Florida Has A Deeply Rooted State Interest In Protecting Its Citizens From Violence

Blount's cause of action against the International is based upon tortious interference with a business relationship, a garden variety state law tort claim (App. to Petition at p. 2a). This Court has long recognized that state law governs tort claims even if labor activity is involved. *See Belknap, Inc. v. Hale*, 463 U.S. 491 (1983); *Farmer v. United Bhd. of Carpenters and Joiners*, 430 U.S. 290 (1977); *Linn v. Plant Guard Workers*, 383 U.S. 53 (1966); *Autoworkers v. Russell*, 356 U.S. 634 (1958); *Machinists v. Gonzales*, 356 U.S. 617 (1958); *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 (1957); *United Workers v. Laburnum Corp.*, 347 U.S. 656 (1954). The applicability of state law is particularly appropriate when the tort claim arises out of labor violence. *Farmer, supra,* (state law governs claim for intentional infliction of emotional distress); *Russell, su-*

pra (state law governs claims arising out of mass picketing and violence). As this Court observed in *Farmer*:

> [O]ur cases have consistently recognized the historic state interest in 'such traditionally local matters as public safety and order and the use of streets and highways. [Citations omitted] and . . . state court actions to address injuries caused by violence or threats of violence are consistent with the effect of administration of the federal scheme: such actions can be adjudicated without regard to the merit of the underlying labor controversy.'

430 U.S. at 299-300. Accordingly, Florida law has been correctly applied throughout this litigation.

The International argues that where a court undertakes to interpret and enforce an international union's constitution, preemption is required (Petition at p. 11). The courts below, however, did not interpret nor enforce the International's constitution in a dispute *between the International and its Local. See infra,* pp. 19-21. Rather, the Florida courts had before it a plain, everyday tort action between Blount and various union and individual defendants. To be sure, the trial court examined the International constitution in determining that the International was liable for Local 397's tortious conduct. But preemption is not appropriate merely because this state tort action touches the interrelationships among employees, employers, and unions. *Farmer*, 430 U.S. at 295-296.

1. The International Is Liable Under Florida Law Because It Dominated The Affairs Of The Local.

Under well-established Florida law, upon evidence of pervasive constitutional control, an international union

may have an agency relationship with an affiliated local sufficient to impute liability to the international for the tortious conduct of its local and affiliated officers and members. *International Union of Operating Engineers, Local 6675 v. Lassiter,* 295 So. 2d 634 (Fla. Dist. Ct. App. 1974), *quashed on other grounds,* 314 So. 2d 761 (Fla. 1975), *rev'd and remanded on other grounds,* 325 So. 2d 408 (Fla. Dist. Ct. App. 1975), *quashed and judgment entered by trial court reinstated,* 349 So. 2d 622 (Fla. 1977). The instant case, quite simply, is on all fours with *Lassiter.*

Here, the provisions of the International's constitution establish that the International completely dominates the affairs of Local 397 in those matters which count: organizing, negotiating, the terms of work agreements, strikes and pickets (App. to Petition at pp. 9a-13a). This weighed heavily in the trial court's determination that Local 397 acted as an agent of the International. *Lassiter,* 295 So. 2d at 638. The International's constitution also provides explicit constitutional instructions concerning negotiations and work agreement proposals and terms (App. to Petition at p. 10a). The International's participation in these areas is both extremely broad and mandatory. The record evidence establishes that the International exercises pervasive constitutional control over its subordinate Local and actually controls and dominates the affairs of the Local (App. to Petition at pp. 4a-5a, 9a-13a).

The Florida courts' finding of liability in this case is consistent with other Florida authority holding that the total domination of a subordinate entity by a superordinate entity is critical in determining agency, and hence liability

upon the superordinate entity. *Folwell v. Bernard,* 477 So. 2d 1060 (Fla. Dist. Ct. App. 1985); *Church of Scientology v. Blackman,* 446 So. 2d 190 (Fla. Dist. Ct. App. 1984); *Fernandez v. Valle,* 364 So. 2d 835 (Fla. Dist. Ct. App. 1978); *Sapp v. City of Tallahassee,* 348 So. 2d 363 (Fla. Dist. Ct. App. 1977). The International claims that *Folwell* somehow limits the rule set out in *Lassiter.* This argument has been repeatedly rejected in this case.[2] In short, the Florida courts followed established Florida precedent in holding the International liable for the conduct of its Local.

2. The International Is Liable Under Florida Law Because It Ratified Or Acquiesced In The Tortious Conduct Of Its Local

Under Florida law, a labor organization or its membership may also be held liable for the common law torts of its officers and members committed during the course of a lawful strike, or other primary labor activities, if the union officers or members authorized, participated in, or ratified the tortious act. *International Union of Operating Engineers v. Long,* 362 So. 2d 987, 989 (Fla. Dist. Ct. App. 1978), *cert. denied,* 372 So. 2d 469 (Fla. 1979). Whenever a principal is sought to be held liable on the ground of ratification, either express or implied, it must be shown that the principal ratified upon full knowledge of all material facts, *or that he was willfully ignorant or*

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[2] The Florida court of appeals stated "We conclude that *Lassiter* is still the controlling law in Florida on the question of agency relationships of parent or international unions and their subordinate local unions . . ." (App. to Petition at p. 27a).

purposefully refrained from seeking information, or that he intended to adopt the unauthorized act at all events, under whatever circumstances. *Bach v. Florida State Board of Dentistry,* 378 So. 2d 34 (Fla. Dist. App. 1979), *citing Oxford Lakeline v. First National Bank,* 40 Fla. 349, 24 So. 480 (1898) (emphasis added).

The Florida courts determined from the evidence that the International ratified or acquiesced in the tortious conduct of its Local and its members (App. to Petition at pp. 22a-23a). Accordingly, the International was held liable for the tortious conduct of its Local under well-established Florida law.

B. This Action Does Not Implicate Section 301 Of The Labor Management Relations Act, 29 U.S.C. § 185.

1. The Florida Courts Did Not Resolve A Dispute Within The Meaning Of Section 301

The International argues that this action is preempted by Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185 (Petition at p. 2). But this is not a dispute involving violation of a contract within the meaning of Section 301. Rather, this is a state tort claim for intentional interference with a business relationship. The International's agent (Local 397) has conceded liability on that score (App. to Petition at pp. 3a-4a).

Indeed, the instant dispute falls outside the express provisions of Section 301. Section 301(a) concerns disputes involving violation of contracts "*between* any employer and a labor organization . . . or *between* any such

labor organizations . . .'' (emphasis added). Where, as here, the resolution of the state law claim does not require construing a collective bargaining agreement, preemption is not mandated. *See Lingle v. Norge Div. of Magic Chef,* 108 S. Ct. 1877 (1988); *Caterpiller Inc. v. Williams,* 107 S.Ct. 2425 (1987); *Allis-Chalmers Corp. v. Lueck,* 471 U.S. 202 (1985).

Relying upon *Lingle,* the International suggests this Court simply substitute the words ''International constitution'' for ''collective bargaining agreement'' to reach the result the International desires (Petition at p. 11). The International fails, however, to consider the different policies present where a dispute involves interpretation of a collective bargaining agreement rather than a garden variety tort action.

Where breach of a collective bargaining agreement is involved, a court examines questions relating to what the parties to a labor agreement agreed and what legal consequences were intended to flow from breaches of that agreement. Such issues must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or a suit alleging liability in tort. *Allis-Chalmers,* 471 U.S. at 211. This protects from impairment the federal scheme established to order and adjust competing interests between the employer and employee through a process of free and voluntary collective bargaining. *Local 174 v. Lucas Flour,* 369 U.S. 95 (1962). Any other result would elevate form over substance and allow parties to evade the requirements of Section 301 by relabeling their contract claims

as claims for tortious breach of contract. *Allis-Chalmers,* 471 U.S. at 211. Furthermore, as this Court has noted:

> . . . not every dispute concerning employment, or tangentially involving a provision or a collective bargaining agreement, is preempted by § 301 or other provisions of federal law . . . Such a rule of law would delegate to unions and unionized employers the power to exempt themselves from whatever state labor standards they disfavor . . . In extending the preemptive effect of § 301 beyond suits for breach of contract, it would be inconsistent with congressional intent under that Section to preempt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract.

Allis-Chalmers, 471 U.S. at 211-212.

Examination of the International constitution, in the present context, is far removed from the main thrust of the federal labor laws. Ancillary consideration of the International constitution in a dispute between the employer and union does not present the potential obstacles to industrial peace inherent where interpretation of a collective bargaining agreement is undertaken. Therefore, this state law tort action does not implicate Section 301 policies.

As made clear in *Allis Chalmers,* Section 301 is concerned with parties to a collective bargaining agreement. The present action is not a dispute between the contracting parties, the International and Local Union. Therefore, no interpretation of the International Union's Con-

stitutional provisions within the meaning of *Allis-Chalmers* and its progeny is involved. Application of state tort law and corresponding state law agency principles in the instant case, will not interfere with federal labor principles.[3] The present case not only involves violent conduct within the province of state regulation, it falls outside of the scope of Section 301's express term.

2. Application Of Florida Law Will Further The Congressional Purpose Of Holding Unions Accountable For Their Tortious Actions

Even if the International constitution is a contract within the meaning of Section 301, *Journeymen v. Local 334*, 452 U.S. 613 (1981), preemption is not warranted. Congress' purpose in including union constitutions within Section 301 was to make unions accountable for agreements which they entered into among themselves, an objective that would stabilize labor organizations, 452 U.S. at 623-624. Such a policy interest is not implicated here; rather, the appropriate policy interest is that of protecting Florida citizens from violence. This is precisely the deeply rooted state interest this Court spoke of in *Farmer*

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[3] It should be emphasized, as the Florida courts noted, that the trial court's holding in this matter is based on narrow grounds. The events of 1979 and 1980 were punctuated by violence and intimidation. The presence of these elements has traditionally invoked the state's jurisdiction because of the state's deeply rooted interest in eliminating such conduct. Thus, the Florida courts followed the agency standard generally applicable in Florida and rejected the assertion by the International that because it is a labor union, the proof of agency must be a higher, more stringent standard than under Florida common law (App. to Petition at p. 29a).

and which requires application of Florida agency principles in the case *sub judice*.

The International argues that application of state law principles is inimical to national labor policy. To the contrary, this is a garden variety state tort law action in which the International must be judged by the same standards as other persons or entities, thus fulfilling the Congressional purpose described above. The self-interest of the International should not outweigh the deeply rooted state interests of Florida in protecting its citizens from violence. Such a result is consistent with prior decisions of this Court since it preserves the deeply rooted interests of a state in protecting its citizens where, as here, the tortious conduct is marked by violence. Absolving the International of liability in this matter would simply encourage further episodes of threats and violence such as that which occurred on October 26, 1979 and the months thereafter.

C. Federal Agency Principles Are Inapplicable To This Common Law Tort Action

The International places great emphasis on *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212 (1979). In *Carbon Fuel*, this Court considered whether an International Union would be vicariously liable in an action pursuant to a Section 301 action arising out of an unauthorized or wildcat strike. In that context, this Court held that the International was not liable because it did not authorize, participate in or ratify the tortious conduct of the particular Local. *Carbon Fuel*, 444 U.S. at 216.

The agency standard in *Carbon Fuel* should not be followed in this case. First, Florida maintains a deeply rooted interest in applying state remedies for violent conduct, regardless of whether it arises in a labor setting. Accordingly, Florida agency standards should be applied to the relationship between the International and its Local. Second, *Carbon Fuel* involved an action under a federal statute for contract damages in a wildcat strike setting. While *Carbon Fuel* might be relevant in such a setting, *see Dade County Police Benevolent Assn. v. City of Homestead,* 444 So. 2d 465 (Fla. Dist. Ct. App. 1984), it is inappropriate for disposition of this garden-variety tort action marked by violence and involving no federal claims. *Allis-Chalmers,* 471 U.S. 202.

Congress' intent in codifying the common-law doctrine of *respondeat superior* was not to preempt application of state agency principles and thus insulate the International from liability for acts of its agent involving the commission of violent conduct not within the purview of Section 301. Such a conclusion is consistent with this Court's reasoning in *Farmer* and its progeny acknowledging a state's interest in applying state law to tort actions independent of collective bargaining agreements.

The International places great significance on the sixth circuit court's opinion in *Shimman v. Frank,* 625 F.2d 80 (6th Cir. 1980). There, a dissident union member brought suit, under Section 101 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411 (1965), against a local and international union and various union members for a beating he suffered as a result

of his dissident activities. Applying the *Carbon Fuel* standard to the evidence, the circuit court found that the International was not liable for the tortious conduct of its Local. *Shimman,* 625 F.2d at 97.

Shimman is not controlling here. *Shimman* involved an action based upon federal labor law, and not a state tort action independent of a collective bargaining agreement seeking redress for damages caused by tortious conduct marked by violence.[4] The Court in *Shimman* also analyzed a constitution separate and distinct from that of the Ironworkers.

Finally, *Shimman* involved an internal union political squabble which led to the beating of a dissident local member for a fellow member. The court declined to impose liability on the International under such circumstances. In the instant case, the underlying tortious conduct emanated from labor union violence arising out of union organizational efforts. Thus, the source of liability in this matter is quite different from *Shimman.* The instant case provides a much more compelling set of circumstances for imposition of liability upon the International.

The other cases cited by Petitioner concerning interpretation of an international union's constitution and re-

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[4] Petitioner also cites *Hamilton v. International Bridge, Structural and Ironworkers Union,* 122 L.R.R.M. (BNA) 3309 (W.D. Ky. 1986) in support of its position. *Hamilton* is distinguishable in that it involved claims under 29 U.S.C. § 158 (unfair labor practices) and 29 U.S.C. § 422(5) (bill of rights of labor organization).

sulting issue of liability are irrelevant.[5] Each involves federal claims; the case at hand involves no federal claim.

D. Federal Interests Need Not Be Accommodated Where The Tortious Conduct Falls Outside The Core Purposes Of Section 301

This Court has recognized that in certain instances accommodation of state and federal interests is necessary. Matters not directly implicating express provisions of federal labor laws may require an accommodation of the federal interest in uniform regulation of labor relations with the traditional concern and responsibility of the state.

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[5] *Berger v. Iron Workers Reinforced Rodmen Local 201*, 843 F.2d 1395 (D.C. Cir. 1988) (Title VII and § 1981 actions); *Hammons v. Adams*, 783 F.2d 597 (5th Cir. 1986) (breach of duty of fair representation); *NLRB v. Local Union No. 46, Metallic Lathers*, 727 F.2d 234 (2d Cir. 1984) (unfair labor practice claims); *Abreen Corp. v. Laborer's Int'l. Union*, 709 F.2d 748 (1st Cir. 1983) (action under Section 303 of the Labor-Management Relations Act); *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209 (9th Cir. 1980) (allegations of breach of collective bargaining agreements and breach of duty of fair representation); *Kerry Coal Co. v. United Mine Workers*, 637 F.2d 957 (3d Cir. 1980), *cert. denied* 454 U.S. 823 (1981) (claim for violation of Labor-Management Relations Act, among others); *Sinyard v. Foot and Davies Div. of McCall Corp.*, 577 F.2d 943 (5th Cir. 1978) (violations of the Civil Rights Act, Equal Pay Act, and duty of fair representation); *Federal Prescription Serv. v. Amalgamated Meat Cutters*, 527 F.2d 269 (8th Cir. 1976) (Norris-LaGuardia Act); *Borowiec v. Local No. 1570 of Intern. Broth.*, 626 F. Supp. 296 (D. Mass. 1986) (claim for breach of duty of fair representation and also alleging wrongful deprivation of union members' right to speak freely, etc.); *York Div. Borg-Warner v. United Ass'n of Journeymen*, 473 F. Supp. 896 (S.D. Fla. 1979) (suit by employer seeking injunction prohibiting alleged work stoppage in violation of no strike clause); *Fabian v. Freight Drivers and Helpers Local No. 557*, 448 F. Supp. 835 (D. Md. 1978) (alleged breach of collective bargaining agreement, among others).

See Linn v. United Plant Guard Workers, Local 114, 383 U.S. 53 (1966); *Old Dominion Branch No. 496 Nat. Assn. of Letter Carriers v. Austin,* 418 U.S. 264 (1924). The International again argues that where a court interprets an international union's constitution, accommodation of the state and federal interests is required (Petition at p. 10). In support of its position, the International cites *Linn* and *Old Dominion.*

Linn and *Old Dominion* are not controlling in this case. Those cases involved state law tort actions for defamation. *Linn,* 383 U.S. at 64-65, *Old Dominion,* 418 U.S. at 273. As this Court recognized in *Linn,* such state regulation weighs heavily upon core purposes of the federal labor laws. *Linn,* 383 U.S. at 64-65. Labor disputes are often heated affairs frequently characterized by bitter and extreme charges, accusations and distortions. *Id.* at 58. Labor and management often speak bluntly and recklessly. *Id.* Therefore, due to the potential adverse effect state regulation could have on this central core relationship in the context of a labor dispute, accommodation of federal and state interests was required. *Id.* at 64-65. This Court also noted the specific statutory language contained in Section 8(c) of the Labor-Management Relations Act, 29 U.S.C. § 158(c), manifesting a congressional intent to encourage free debate in labor disputes. *Linn,* 383 U.S. at 62. No such concerns are present here. This is a garden variety state tort action for intentional interference with a business relationship.

Examination of provisions contained in the International's constitution will not affect the core purposes of the National Labor Relations Act. A state is not pre-

cluded from regulating all aspects of the employer-employee relationship. For example, state regulations imposing minimum labor standards have been found to be valid and unexceptional since they do not impermissibly intrude upon the collective bargaining process. *Fort Halifax Packing Co. v. Coyne,* 107 S. Ct. 2223 (1987). Similarly, actions against an employer by strike replacements for misrepresentation and breach of contract against an employer were not preempted under the Act. *See Belknap, Inc. v. Hale,* 463 U.S. 491 (1983).

As these cases demonstrate, the main thrust of the federal labor laws is aimed at ordering and adjusting competing interests through a process of free and voluntary collective bargaining. *Lucas Flour, supra.* State law which impermissibly intrudes upon this federal frame work aimed at peaceful resolution of disputes must give way to federal interests. *Allis-Chalmers, supra.* Where, as here, the state law tort action is independent of any agreement governing such a core relationship, it falls outside the main thrust of the federal scheme, and state regulation is proper. *Norge Div. of Magic Chef, supra.*

CONCLUSION

The Florida courts, applying Florida law, held the International liable for the torts of its agent Local 397 on two (2) separate and distinct bases: (1) The International's domination of the affairs of the Local (*see Lassiter, supra*); and (2) the International's officers and mem-

bers ratifying or acquiescing in the tortious activities of the Local (*see Long, supra*). These findings were supported by substantial evidence. The International's petition for a writ of certiorari is based simply on its disagreement with the factual findings of the courts below. The International has also failed to establish any legitimate basis for preemption of state law agency principles. Florida has a deeply rooted interest in protecting its citizens from violence. This interest must be preserved. Finally, application of Florida agency principles does not impermissibly intrude upon the core purposes of the federal labor laws.

For all the foregoing reasons, Blount respectfully requests that the Court deny the International's Petition for Writ of Certiorari.

Respectfully submitted,

STUART NEWMAN
GARY R. KESSLER*
DAVID L. GORDON
JACKSON, LEWIS, SCHNITZLER
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Attorneys for Respondent

* Counsel of Record

APPENDIX "A"

IN THE CIRCUIT COURT OF
POLK COUNTY, FLORIDA

BLOUNT INTERNATIONAL, LTD., et al.,	)	
Plaintiff,	)	
v.	)	CASE NO. GC-G-79-3322
INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL AND ORNAMENTAL IRON-WORKERS, AFL-CIO, et al.,	)	
Defendants.	)	

CONSENT JUDGMENT AGAINST DEFENDANTS LOCAL 397 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL, AND ORNAMENTAL IRONWORKERS, CHARLES M. "TONY" PINION, STEPHEN DIXON, MICHAEL JOSEPH MCLOONE, LARRY DEAN LANIER AND BILLY RAY CONNER

On October 27, 1979, Plaintiff Blount International, Ltd. invoked the jurisdiction of the Court by seeking an Interlocutory and Preliminary Injunction pursuant to Rule 1.610 of the Florida Rules of Civil Procedure against Local 397 of the International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO ("Local 397"), Charles M. "Tony" Pinion, Stephen Dixon, Michael Joseph McLoone, Larry Dean Lanier and Billy Ray Conner ("Defendants"). On November 2, 1979, that injunc-

tion was entered by the Court and it remains in effect at the present time (See Attachment A).

On November 11, 1980, Plaintiff filed an Amended Complaint which sought compensatory and punitive damages because of Defendants' "malicious and tortious illegal picketing and violent acts." Specifically, Plaintiff alleged that Defendant Local 397 condoned and ratified the tortious and illegal activity of their members, agents or representatives. Plaintiff's Amended Complaint also alleged that Defendants threatened, intimidated, coerced and harassed Plaintiff, its employees and agents and their families. It further alleged that Defendants inflicted and repeatedly threatened to inflict damage and injury to Plaintiff, its property, agents and employees. Defendants also allegedly interfered with Plaintiff's business relationship with the City of Lakeland, Florida, Plaintiff's subcontractors, and others, when Defendants condoned and ratified violence and intimidation during a labor protest outside the gates of Plaintiff's power plant construction project at the McIntosh Power Plant on Lake Parker Drive in Lakeland, Florida during the latter part of October 1979 and thereafter. The protest escalated into a riot by an estimated 400 to 450 protesters, a substantial number of whom were members, agents or representatives of Local 397 of the International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO.

As a result of the violence and intimidation which occurred in the latter part of October 1979 and thereafter, Plaintiff was required to expend substantial effort, time and sums of money in order to protect the safety of its employees and their families and to protect Plaintiff's

property. Plaintiff's tort action seeks compensation for those expenses.

Since the inception of this action, the parties to this Consent Judgment have engaged in extensive discovery and motion practice. These parties now desire to resolve this action and all issues raised by the Amended Complaint, as it relates to them, without the time and expense of contested litigation. The parties hereto have therefore petitioned the Court to enter the following Consent Order and Judgment.

Now, therefore, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1.

The Court has jurisdiction of the subject matter of this action and of the parties hereto. The Amended Complaint states a claim upon which relief may be granted against the parties hereto under the laws of the state of Florida.

2.

Plaintiff in this action is Blount International, Ltd. The Defendants party to this Consent Judgment are Local 397 of International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO, Charles M. "Tony" Pinion, Stephen Dixon, Michael Joseph McLoone, Larry Dean Lanier and Billy Ray Conner.

3.

Defendants admit that the conduct of the individual Defendants and of the agents, representatives and mem-

bers of Local 397 on October 26, 1979 was threatening, intimidating, coercing and harassing of Plaintiff, its employees, agents and their families, and that said conduct violated the laws and dignity of the state of Florida. Furthermore, the Defendants party to this Consent Judgment admit that they interfered with the business relationship which Plaintiff had established with the City of Lakeland, Florida, and certain of Plaintiff's subcontractors, and that they engaged in the violent, threatening, and intimidating conduct which occurred during the latter part of October, 1979 at Plaintiff's power plant construction site on Lake Parker Drive in Lakeland, Florida.

4.

On November 2, 1979, an Interlocutory and Preliminary Injunction was entered by the Court for the purpose of controlling violent and intimidating conduct by the individual Defendants and by members, agents and representatives of Local 397 of the International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO which occurred at Plaintiff's power plant construction site at Lake Parker in Lakeland, Polk County, Florida in the latter part of October 1979, and thereafter.

5.

By virtue of this Consent Judgment, the terms and conditions of the Interlocutory and Preliminary Injunction entered by the Court on November 2, 1979 shall be, and hereby become permanent, perpetual, and binding upon all Defendants party to this Consent Judgment.

6.

The parties to this Consent Judgment expressly agree that the geographical scope of the within described Permanent Injunction shall include any project, activity or construction site by Plaintiff within Local 397's current or future jurisdiction. Any actions taken by the Defendants party to this Consent Judgment inconsistent with the terms and provisions of the Injunction, and this Consent Judgment, shall be considered by the Court as civil contempt.

7.

Upon a finding of contempt, the Court shall issue any and all reasonable orders, consistent with the Court's legal and equitable power, to control or restrain any such action which is inconsistent with or contrary to the terms of this Judgment.

8.

Upon a finding of contempt, the prevailing party shall be entitled to an award of any expenses incurred, including costs and attorney's fees, in seeking to enforce the terms of the Injunction as may be allowed by law.

9.

As a direct and proximate result of the aforesaid tortious conduct by the Defendants party to this Consent Judgment, said Defendants agree to pay Plaintiff the sum of $55,000.00 as full and complete compensation for its damages, expenses and attorney's fees as follows:

(a) Immediate payment by cashier's check or certified funds in the amount of $27,500.00 to Blount

International, Ltd. upon the approval and entry of this Consent Judgment by the Court; and

(b) Execution of a note by Local 397 in favor of Blount International, Ltd. in the amount of $27,500.00 payable in equal installments over a term of eighteen (18) months, with interest to be calculated at the prime rate plus 2% and secured by a lien on Local 397 real property. Monthly payments under said note shall commence June 1, 1986 and shall be due on or before the 10th of each month until said note is satisfied. Payments under the note shall be by cashier's check or certified funds and shall be sent by certified mail to the following address: Mr. Glenn O. Pruitt, Blount International, Ltd., P. O. Box 4577, Montgomery, Alabama 36116. Should Local 397 fail to make payments pursuant to the terms of said note, Blount International, Ltd. shall be entitled to immediate enforcement of its security interest in Local 397 real property.

10.

In consideration for these Defendants' agreement to abide by the terms of this Consent Judgment, Blount International, Ltd. agrees to consider this Consent Judgment as *res judicata* against these Defendants as to the matters alleged in its Amended Complaint and not to bring other proceedings against these Defendants based on their tortious conduct arising out of the events described in the Amended Complaint.

11.

The parties hereto agree to bear their own court costs incurred in this action.

ORDERED this 13th day of June, 1986.

/s/ E. Randolph Bentley
Tenth Judicial Circuit Judge

AGREED AND CONSENTED TO:

By: Gary R. Kessler
Blount International, Ltd.

By: C. W. Rutledge
For Local 397 of the
International Bridge,
Constructural and Ornamental
Ironworkers, AFL-CIO

By: Charles M. Tony Pinion
Charles M. "Tony" Pinion

By: Stephen Dixon
Stephen Dixon

By: Michael Joseph McLoone
Michael Joseph McLoone

By: Larry Dean Lanier
Larry Dean Lanier

By: Billy Ray Conner
Billy Ray Conner

Exhibit A

IN THE CIRCUIT COURT OF POLK COUNTY
STATE OF FLORIDA

BLOUNT INTERNATIONAL, LTD., Plaintiff, — v — GULF COAST DISTRICT COUNCIL OF CARPENTERS; INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL AND ORNAMENTAL IRON-WORKERS, LOCAL NO. 397; INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL AND ORNAMENTAL IRON-WORKERS, LOCAL NO. 798; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL NO. 2217; INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 925; CHARLES M. "TONY" PINION; CHESTER DENNISON; BILLY RAY CONNORS; CHESTER LUCAS; LAMAR GLEASON; KENNETH SMITH; KEVIN BOLINGER; STEPHEN HART; DAVID PEARSON; STEPHEN DIXON; MICHAEL JOSEPH McLOONE; LARRY LANIER; RUFUS NEAL HARRELL; BRUCE	CIVIL ACTION NO. GCG-79-3322 ORDER OF INJUNCTION

BEERY; AND NUMEROUS OTHER LABOR ORGANIZATIONS AND OTHER INDIVIDUALS WHOSE IDENTITIES ARE UNKNOWN,

Defendants.

ORDER FOR PRELIMINARY AND PERMANENT INJUNCTION

THIS CAUSE coming on to be heard upon Plaintiff's verified Complaint and upon its application for a Preliminary and Permanent Injunction, and upon argument by counsel for all parties, it appearing that injuries to persons and property have already occurred and that, therefore, Plaintiff is entitled to an Order for Preliminary and Permanent Injunction; and that the actions sought to be enjoined would be unlawful, per se, or in ultimate purpose and effect; it is therefore;

ORDERED AND ADJUDGED that:

1. The Defendants, each and every one, and through their agents and representatives, and all other persons acting at the direction of or in active concert or participation with them, jointly and severally, and all persons receiving notice of this Order for Preliminary and Permanent Injunction are hereby restrained and enjoined and ordered to refrain from:

A. Entering upon and/or trespassing upon the job site and premises of the McIntosh Unit Number Three Power Plant (hereinafter the "Job Site");

B. Engaging in mass picketing and assemblage at the Job Site, or from any manner whatsoever ob-

structing or interfering with free ingress and egress to and from the job Site;

C. Threatening, intimidating, coercing or harassing the Plaintiff, Plaintiff's employees and agents, and their families, photographing or otherwise copying the license plate numbers of Plaintiff, Plaintiff's employees and agents, and their families;

D. Photographing the Job Site or any individuals, equipment or vehicles physically present upon the Job Site;

E. Threatening, intimidating, or in any other way interfering with Plaintiff's employees' right to engage in their lawful vocation with Plaintiff;

F. Inflicting and/or threatening to inflict damage or injury to the person and/or property of the Plaintiff, its agents, employees and their families;

G. The making of any threats or the use of insulting, intimidating, opprobrious, or violent language against the Plaintiff, its officers, agents, employees, their families, or peace officers carrying out official duties, or the harassing of such persons or name calling, use of epithets, or similar conduct against such persons;

H. Establishing, permitting and/or maintaining more than —— ( ) pickets, at any one time, at either Gate One, Gate Two or Gate Five to the Job Site located at McIntosh Unit Number Three in Lakeland, Florida (Identified on Exhibit "A" attached): The foregoing restraint shall not apply when pickets are changing; however, Defendants and each of them are restrained from changing pickets or commencing pickets during the hours of 6:30 to 8:00 A.M., and 5:00 to 6:30 P.M. Said pickets, above described, shall not stop or stand at any time while at or within one hundred feet of an entrance to the Job Site, shall carry signs identifying their local and international union affiliation while engaging in the picketing permitted

by this Order and shall not otherwise interfere with ingress and egress of automobile, trucks or pedestrian traffic to or from the Job Site;

I. Congregating within and/or assembling within five hundred (500) yards of any said pickets at the above-referenced Job Site at any time;

J. Picketing the Job Site in any manner or massing at places in the vicinity of Job Site property other than at entrances described above;

K. In any manner whatsoever interfering with Plaintiff's employees' right to engage in their lawful vocation.

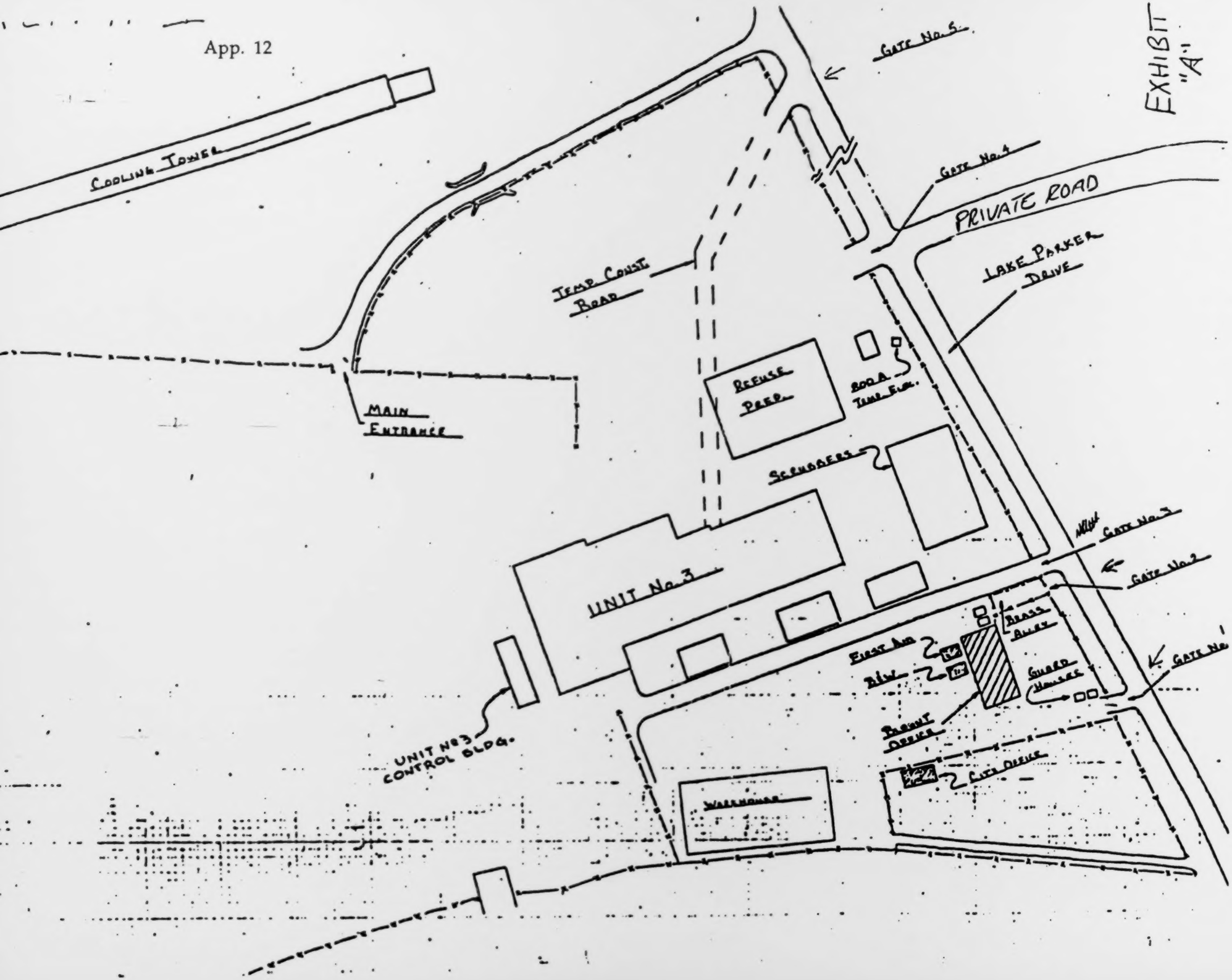
It is FURTHER ORDERED that Plaintiff, its agents, officers, security guard and supervisors shall upon entering and leaving the Job Site, drive at an appropriately reduced speed consistent with their duty to exercise due care to avoid injury to those persons engaged in peaceful picketing and shall not harass or intimidate the pickets.

ORDERED AND DECREED that the Sheriff of Polk County, Florida, together with all other local and state law enforcement agencies coming within the jurisdiction of this Court, are hereby commanded to enforce the terms of this Order and to take into custody any persons violating the terms of this Order and bring them before this Court for such action as this Court deems appropriate. The Defendants herein are directed to cooperate with law enforcement agencies and personnel.

ORDERED in Court this —— day of November, 1979, at ——o'clock —.m. to preserve the peace.

JUDGE
CIRCUIT COURT OF POLK COUNTY, FLORIDA

EXHIBIT "A"


COOLING TOWER
GATE No. 5
GATE No. 4
PRIVATE ROAD
LAKE PARKER DRIVE
TEMP CONST. ROAD
REFUSE PILE
200 A. TIME FOR.
MAIN ENTRANCE
SCRUBBERS
UNIT No. 3
GATE No. 3
GATE No. 2
GATE No. 1
BRASS ALLEY
FIRST AID
GUARD HOUSE
PARENT OFFICE
CITY OFFICE
WAREHOUSE
UNIT No. 3 CONTROL BLDG.

APPENDIX "B"

IN THE CIRCUIT COURT OF
POLK COUNTY, FLORIDA

BLOUNT INTERNATIONAL, LTD., et al., Plaintiff,	
v.	CASE NO. GC-G-79-3322
INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL AND ORNAMENTAL IRON-WORKERS, AFL-CIO, et al., Defendants.	

STIPULATION

The Plaintiff, Blount International, Ltd., and the remaining Defendant, International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO (International), hereby stipulate and agree as follows:

1. The Plaintiff, Blount International, Ltd., hereby withdraws its request for a jury trial as to the issue of the agency relationship between the Defendant International and the Defendant Local 397.

2. The Plaintiff and the International agree that the agency issue may be bifurcated from the remaining issues in the case for purposes of its disposition by the Court.

3. The Court may resolve the agency issue on the basis of the depositions and exhibits on file with the Court in accordance with the parties' respective submissions on the International's Motion For Summary Judgment. Specifically, the parties stipulated, for the purpose of the Court's consideration of the agency issue, to the admissibility of the affidavit of Juel Drake, the depositions of Chester Dennison, Billy Ray Conner and John Walsh, the Constitution of the International, the by-laws of Local 397, certain minutes of meetings of Local 397, and any other evidence which has been submitted by the parties on the International's Motion For Summary Judgment, provided, however, that the parties reserve their right to challenge the relevancy or materiality of such evidence or the weight it should be given by the Court.

4. The parties may submit briefs and proposed findings of fact and conclusions of law in support of their respective positions in accordance with the following schedule:

a. Plaintiff's initial brief to be served on or before June 10, 1986.

b. Defendant International's answer brief to be served within twenty-one (21) days after receipt of initial brief.

c. Plaintiff's reply brief to be served within fourteen (14) days after receipt of answer brief.

Following the receipt of briefs, proposed findings of fact and proposed conclusions of law, the court shall take the agency issue under submission and may set the matter for oral argument. Following its decision on the agency

question, the Court may schedule such further proceedings as may be appropriate.

By: Gary R. Kessler
Gary R. Kessler
Attorney for Plaintiff
Blount International, Ltd.

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225 Peachtree Street, N.E.
Atlanta, Georgia 30303
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By: Mark F. Kelly,
Mark F. Kelly
Attorney for Defendant
International Association of
Bridge, Constructural and
Ornamental Ironworkers,
AFL-CIO

KELLY & MCKEE, P.A.
1724 E. Seventh Avenue
P. O. Box 75638
Tampa, Florida 33675-0638
(813) 248-6400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been forwarded by First Class United States Mail to A. H. Lane, Esquire, LANE, TROHN, BERTRAND & WILLIAMS, P.O. Drawer J. Lakeland, FL 33802; and to David A. Rosenfeld, Esquire, VAN BOURG, WEINBERG, ROGER & ROSENFELD, 875 Battery Street, Third Floor, San Francisco, CA 94111, on this 20th day of May, 1986.

/s/ Mark F. Kelly
ATTORNEY